IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 27TH JULY 2007 / 5TH SRAVANA 1929

WP(C).No. 29458 of 2006(F)

OS.207/2002 of II ADDL.M.C.,NEYYATTINKARA

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PETITIONER:

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1. C.A. VINCENT,
   ANCHU PRIYA, MARUTHOOR NEYYATTINKARA,
   NOW RESIDING AT CHERUPUSHPAVILAS, MULLILAVUVILA,
   KUDAYAL P.O., VELLARADA.

2. LAILA JOHN,
   ANCHU PRIYA, MARUTHOOR, NEYYATTINKARA,
   NOW RESIDING AT CHERUPUSHPAVILAS, MULLILAVUVILA,
   KUDAYAL P.O., VELLARADA.

BY ADV. SRI.R.GOPAN

RESPONDENTS:

STATE BANK OF TRAVANCORE,
NEYYATTINKARA, REPRESENTED BY ITS BANK MANAGER.

BY ADV. SRI.R.S.KALKURA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXTS:

EXT.P1: THE PHOTOCOPY OF THE JUDGMENT IN O.S.207/2002 OF THE II ADDL. MUNSIFF'S COURT, NEYYATTINKARA

EXT.P2: -DO- OF THE LETTER DT.10.12.2003

EXT.P3: -DO- OF THE RECEIPT DT.19.12.2003

EXT.P4: -DO- OF E.P.313/2004 IN O.S.207/2002

EXT.P5: -DO- OF THE STATEMENT OF ACCOUNT FILED BY THE RESPONDENT ON 31.7.2006

EXT.P6: -DO- OF THE STATEMENT OFA CCOUNTS FILED BY THE PETITIONERS ON 8.8.2006

EXT.P7: -DO- OF THE ORDER IN E.P.313/2004 DT.28.8.2006

EXT.P8: -DO- OF THE MEMO DT.29.9.2006

jj /TRUE COPY/

P.A. TO JUDGE

M.N.KRISHNAN, J.

WP(C)No. 29458 OF 2006 F

Dated this the 27th July, 2007.

JUDGMENT

This writ petition is filed challenging the order of the II Additional Munsiff, Neyyattinkara in E.P.313/04. The contention of the judgment debtor is to the effect that the bank has given him a memo refixing the amount on 19.12.2003 ad Rs.39,267/- and therefore he is only bound to pay the amount as per the same and not the amount as claimed by the decree holder or in other words the contention of the judgment debtor appears to be that there has been a recision of the contract or a subsequent new contract whereby the bank has fixed the liability at Rs.39,267/-. The document which he relies upon is Ext.P2. It is a notice issued at the revenue recovery camp whereby it is stated that if the amount of Rs.39,267/- plus interest is paid or substantial amount is paid there will be exemption of the further payment. A reading of the said notice would only reveal that in spite of a decree the bank is prepared to give a concession provided the amount is paid substantially on that date. Rather it is an invitation given to the judgment debtor to attend the camp and by making a substantial payment get reduction of the liability. Now learned counsel for the writ petitioner

submits that by virtue of this Ext.P2 notice the bank is estopped from contending otherwise and he has only to pay the amount shown in the notice. I may submit that competent civil court has passed a decree. The decree is in force. In the meanwhile an opportunity is given to the judgment debtor for making the payment and if it is paid in lump or at least substantially some concession is offered. That does not mean that by making a payment of Rs.1,000- one can get rid of the liability which is otherwise enforceable under the decree. So, the sum and substance of Ext.P2 has to be understood only in that fashion and it should not be read as the bank waiving the decree or fixing the new liability and only demands payment of the amount stated therein. What the bank advances is a concession and if it is complete as stipulated in the notice then certainly the bank would have only to enforce that amount and not otherwise. The petitioner herein does not entail that benefit and it can be seen that even as per his statements the amount paid by him on 19.12.2003 is Rs.1,000/- then on 6.1.2005 is Rs.5,000/-. So there is no payment of the substantial amount or the amount in a lump sum and therefore what is sought to be granted under Ext.P2 cannot be claimed by the person as a matter of right. I agree with the finding of the trial Judge and hold that the

order does not require any interference. At the same time, if the judgment debtor is prepared to pay the entire balance amount in a lump sum or in one or two instalments, the bank, if possible, can bestow its attention and try to give some concession so that he will also get the satisfaction of getting some benefit on account of the prompt payment, though at a belated stage. Writ petition is disposed of accordingly.

M.N.KRISHNAN
Judge

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